90-1651 (2)
90-1513 (4)

No. ~~90-1470~~

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1990

COLEGIO DE ABOGADOS DE PUERTO RICO,
PETITIONER,

v.

ROBERT E. SCHNEIDER; HECTOR RAMOS; ORESTE V. RAMOS; JORGE F. ROMANY; AND JORGE SOUSS,
RESPONDENTS, CROSS-PETITIONERS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, as the record has been developed below, the Commonwealth of Puerto Rico can constitutionally condition the right to practice law in Puerto Rico upon compelled membership in, and the payment of compulsory dues to, the Colegio de Abogados de Puerto Rico without *per se* violating an individual attorney's First Amendment rights.

2. Whether, assuming any award of damages was warranted in favor of plaintiffs' in this case, the nominal award of $1.00 does not constitute an abuse of discretion on the part of the District Court, where plaintiffs submitted no evidence of the nature and extent of the harm they have allegedly suffered, and cited no precedent imposing on the Court the obligation to speculate on the extent of their injury.

3. Whether, plaintiffs lack taxpayer standing to challenge the Commonwealth of Puerto Rico's internal revenue offices to sell notarial and forensic stamps issued by the Colegio de Abogados de Puerto Rico, where they failed to show that such activity involves "a measurable appropriation" or loss of revenue, or "a direct dollars-and-cents injury" to themselves.

PARTIES TO THE PROCEEDINGS

Petitioners and cross-respondent, who were appellants below, are Colegio de Abogados de Puerto Rico, petitioner in Case No. 90-1470; the Secretaries of Justice and of the Treasury of the Commonwealth of Puerto Rico, petitioners in Case No. 90-1513, and the Justices of the Supreme Court of Puerto Rico, nominal parties in their rule-making capacity.

Respondents and cross-petitioners, who were appellees below, are Robert E. Schneider, Hector Ramos, Oreste V. Ramos, Jorge F. Romany, and Jorge Souss.

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OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

Petitioner and cross-respondent Colegio de Abogados de Puerto Rico, hereby respectfully opposes a cross-petition that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered on October 24, 1990 in Cases Nos. 88-1937, 88-1938, and 88-1939, reported at 917 F.2d 620.

Opinions Below

The final opinion of the United States Court of Appeals for the First Circuit was entered on October 24, 1990, is reported at 917 F.2d 620 and appears reprinted at pages 1 to 36 of the Appendix to the Petition for the Writ of Certiorari in Case No. 90-1470 filed by the Colegio de Abogados de Puerto Rico.

Jurisdiction

Invoking federal jurisdiction under 42 U.S.C. §1983, the respondents and cross-petitioners brought this suit in the United States District Court for the District of Puerto Rico. On March 3, 1988, the District Court entered its opinion and judgment, reported at 682 F. Supp. 674 (D.P.R. 1988), declaring unconstitutional provisions of Puerto Rico laws imposing mandatory membership in the Colegio de Abogados de Puerto Rico, mandatory payment of dues to the Colegio de Abogados de Puerto Rico and mandatory purchase of stamps issued by the Colegio de Abogados de Puerto Rico.

On petitioner's and cross-respondents' appeals, the First Circuit entered a judgment on October 24, 1990 that affirmed in part, reversed in part, and modified and remanded the case for further proceedings consistent with its opinion. Upon a timely petition for rehearing with the suggestion that the case be reheard *en banc*, the First Circuit denied the petition for rehearing on December 20, 1990.

This Court has jurisdiction to review the judgment or decision of the Court of Appeals for the First Circuit under 28 U.S.C. §1254(1).

This Opposition to Cross-Petition for Writ of Certiorari is authorized under the provisions of Rules 12 and 13 of the Rules of this Court.

Constitutional and Statutory Provisions Involved

Petitioner and cross-respondent Colegio de Abogados de Puerto Rico respectfully refer the Court to its statement of Constitutional and Statutory Provisions Involved contained in its Petition for Writ of Certiorari dated March 26, 1991.

Statement of the Case

Petitioner and cross-respondent Colegio de Abogados de Puerto Rico respectfully refer the Court to its Statement of the Case contained in its Petition for Writ of Certiorari dated March 26, 1991.

Reasons for Denying the Writ

I. As the Record Has Been Developed Below, the Commonwealth of Puerto Rico Can Constitutionally Condition the Right to Practice Law in Puerto Rico Upon Compelled Membership in, and the Payment of Compulsory Dues to, the Colegio de Abogados de Puerto Rico Without Per Se Violating an Individual Attorney's First Amendment Rights.

The Court below fully considered and correctly decided the issue attempted to be presented now by the cross-petitioner. This Court in *Keller* v. *State Bar of California*, 495 U.S. __, 110 L.Ed.2d 1, 110 S.Ct. 2228 (1990), reaffirmed its earlier decision in *Lathrop* v. *Donahue*, 367 U.S. 820 (1961), that compelled membership in an integrated state bar and the payment of compulsory dues as a member of such bar, does not *per se* violate an individual attorney's First Amendment rights.

In *Lathrop*, six members of this Court, relying on *Railway Employees* v. *Hanson*, 351 U.S. 225 (1956), rejected a Wisconsin lawyer's claim that he could not constitutionally be compelled to join and financially support a state bar association

that expressed opinions on, and attempted to influence, legislation:

> "In our view the case presents a claim of impingement upon freedom of association no different from that which we decided in (*Hanson*). We there held that §2, Eleventh of the Railway Labor Act... did not on its face abridge protected rights of association in authorizing union-shop agreements between interstate railroads and unions of their employees conditioning the employees' continued employment on payment of union dues, initiation fees and assessments... In rejecting Hanson's claim of abridgement of his rights of freedom of association, we said, 'on the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar.' 351 U.S., at 238." *Lathrop*, 367 U.S., at 842 (plurality opinion) (footnote omitted).

In *Keller*, this Court held that the petitioners' freedom of association claim based on the State Bar of California's use of its name to advance political and ideological causes or beliefs would not be addressed by this Court in the first instance. 495 U.S. at __, 110 L.Ed.2d at 16. As in this case, the California Court had not addressed the claim. Despite the disparaging and unwarranted remark by the First Circuit panel opinion that "there is an argument to be made that 'the Colegio's penchant for ideological contention is so pervasive and unremitting... that Puerto Rico cannot constitutionally force dissenters to join," *Romany* v. *Colegio de Abogados de Puerto Rico*, 742 F.2d 32, at 40-41 (1st Cir. 1984), the very First Circuit acknowledges that the record in this case leaves that argument unresolved, leaving it unprepared to hold that a rebate and escrow system to protect dissenters is unworkable at the

Colegio. 917 F.2d at 634. In leaving that argument unresolved, the First Circuit also left open any consideration of an argument that the Colegio may be enjoined permanently from using its name to advance political or ideological causes beyond those for which mandatory financing is permissible. 917 F.2d at 634, n.19.

Respondents and cross-petitioners cite no authority to support their proposition to the contrary. Their statement that it is "clearly wrong" is not meaningful. To attempt to resolve this important issue on the basis of the record as it has been developed by the plaintiffs would disserve the development of First Amendment doctrine.

II. Assuming Any Award of Damages Was Warranted in Favor of Plaintiffs in This Case, the Nominal Award of $1.00 Does Not Constitute an Abuse of Discretion on the Part of the District Court, Where Plaintiffs Submitted No Evidence of the Nature and Extent of the Harm They Have Suffered, and Cited No Precedent Imposing on the Court the Obligation to Speculate on the Extent of Their Injury.

The decision below on the award of nominal damages in the amount of $1.00 follows an unbroken line of authority of this Court that in the absence of any proof of damages, a district court acts within its discretion in declining to award more than a nominal sum. *See Memphis Community School Dist.* v. *Stachura*, 477 U.S. 299, 308 n.11 (1986) ("(N)ominal damages, and not damages based on some undefinable 'value' of infringed rights, are the appropriate means of 'vindicating' rights whose deprivation has caused actual, provable injury.") (citing *Carey* v. *Piphus*, 435 U.S. 247 (1978)). *See also id.* at 315-316 (Marshall, J., concurring) (quoting *Hobson* v. *Wilson*, 737 F.2d 1, 62 (D.C. Cir. 1984)) (injury to a First Amendment-protected interest may be compensated with

substantial damages, but "only to the extent that it was 'reasonably quantifiable'").

There was no evidence to allow the District Court to award damages in any amount higher that $1.00 through any method other than speculation, which would constitute a clear abuse of discretion. There was no proof of any damages that may allow this Court to reverse the First Circuit's judgment on that issue.

III. Plaintiffs Lack Taxpayer Standing to Challenge the Commonwealth of Puerto Rico's Internal Revenue Offices to Sell Notarial and Forensic Stamps Issued by the Colegio de Abogados de Puerto Rico, Where They Failed to Show That Such Activity Involves "A Measurable Appropriation" or Loss of Revenue, or "A Direct Dollars-and-Cents Injury" to Themselves.

A party who invokes federal judicial power to challenge the constitutionality of a statute of the Commonwealth of Puerto Rico must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, and not merely what he suffers in some indefinite way in common with people generally.

In *Doremus* v. *Board of Education*, 324 U.S. 429 (1952), a taxpayer was held to have no standing to attack the constitutionality of a state statute providing for the reading of Bible verses at the opening of each public-school day, where there was no allegation that such activity was supported by any separate tax or paid for from any particular appropriation or that it added any sum whatever to the cost of conducting the school or increased any tax paid by him. This Court's subsequent decision in *Valley Forge Christian College* v. *Americans United for Separation of Church and State*, 454 U.S. 464 (1982), held that the plaintiffs lacked standing, within the

meaning of Article III, as either taxpayers or citizens to bring suit to challenge the conveyance of a former military hospital to a church-related college after the facility had been declared surplus real property by the Department of Health, Education and Welfare, and then permitted the college to acquire the property without making any financial payment. The Court concluded that the plaintiffs lacked standing, in effect holding that the alleged deprivation of the constitutional use of their tax dollars failed to state a cognizable personal injury different from the harm purportedly sustained by taxpayers generally.

In this case, plaintiffs have made no showing that the activities of the Colegio de Abogados de Puerto Rico that they are challenging involve any measurable appropriation or loss of revenue, or any direct injury to themselves. Therefore, the plaintiffs may not challenge the use of government facilities to sell the Colegio stamps.

Conclusion

As the record has been developed below, compelled membership in the Colegio de Abogados de Puerto Rico does not involve any implication of First Amendment rights of the respondents and cross-petitioners. The courts below did not abuse their discretion in awarding the amount of $1.00 for the damages allegedly suffered by the plaintiffs. Plaintiffs have no standing to challenge the use of government facilities to sell the notarial and forensic stamps issued by the Colegio de Abogados de Puerto Rico.

Respectfully submitted,

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